

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

TRAVELERS CASUALTY AND SURETY COMPANY as  
Administrator for RELIANCE INSURANCE COMPANY,

Plaintiff,

vs.

DORMITORY AUTHORITY – STATE OF NEW YORK,  
TDX CONSTRUCTION CORP. and KOHN PEDERSEN  
FOX ASSOCIATES, P.C.,

Defendants.

---

DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
AND TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

vs.

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.

---

TRATAROS CONSTRUCTION, INC. and TRAVELERS  
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

vs.

CAROLINA CASUALTY INSURANCE COMPANY; BARTEC  
INDUSTRIES, INC.; DAYTON SUPERIOR SPECIALTY  
CHEMICAL CORP. a/k/a DAYTON SUPERIOR CORPORATION;  
SPECIALTY CONSTRUCTION BRANDS, INC. t/a TEC;  
KEMPER CASUALTY INSURANCE COMPANY d/b/a KEMPER;  
INSURANCE COMPANY; GREAT AMERICAN INSURANCE  
COMPANY; NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA; UNITED STATES FIRE  
INSURANCE COMPANY; ALLIED WORLD ASSURANCE  
COMPANY (U.S.) INC. f/k/a COMMERCIAL UNDERWRITERS :

:  
:  
:  
:  
:  
:  
: 07-CV-6915 (DLC)  
: **ECF CASE**

:  
:  
: **ANSWER OF**  
: **LUMBERMENS**  
: **MUTUAL CASUALTY**  
: **COMPANY TO CROSS-**  
: **CLAIM OF**  
: **OHIO CASUALTY**  
: **INSURANCE**  
: **COMPANY d/b/a**  
: **OHIO CASUALTY**  
: **GROUP**

INSURANCE COMPANY; ZURICH AMERICAN INSURANCE' :  
 COMPANY d/b/a ZURICH INSURANCE COMPANY; OHIO :  
 CASUALTY INSURANCE COMPANY d/b/a OHIO CASUALTY :  
 GROUP; HARLEYSVILLE MUTUAL INSURANCE COMPANY :  
 (a/k/a HARLEYSVILLE INSURANCE COMPANY); JOHN DOES :  
 1-20 and XYZ CORPS. 1-20, :  
 :  
 :  
 \_\_\_\_\_ Fourth-Party Defendants. :

Comes now Fourth-Party Defendant Lumbermens Mutual Casualty Company ("LMC"), improperly sued as Kemper Casualty Insurance Company d/b/a Kemper Insurance Company,<sup>1</sup> and for its Answer to the Cross-Claim of Ohio Casualty Insurance Company d/b/a Ohio Casualty Group states as follows:

**FIRST COUNT**

1. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 through 149 of the Answer to Fourth-Party Complaint of Trataros Construction, Inc. and Travelers Casualty & Surety Company on Behalf of Ohio Casualty Insurance Company d/b/a Ohio Casualty Group ("Ohio Casualty"). Further, LMC admits the First, Second, Fifth, Sixth, Seventh, Sixteenth, and Seventeenth Separate Defenses of the Answer of Ohio Casualty. In addition, LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Third, Fourth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, and Fifteenth Separate Defenses of the Answer of Ohio Casualty. Further, LMC admits the allegations contained in the Eighth Separate Defense that the sums for which the Fourth-Party plaintiffs seek indemnification may be precluded by public policy and/or by express provisions of law, and LMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the Eighth Separate Defense of Ohio Casualty. Also, LMC

admits the allegations contained in the Eighteenth Separate Defense as to Crocetti, and LMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in the Eighteenth Separate Defense of Ohio Casualty.

2. LMC admits that Ohio Casualty issued a policy of insurance to Bartec Industries. LMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the First Count of the Cross-Claim.

3. The policy of insurance speaks for itself. To the extent that the allegations in paragraph 3 of the First Count of the Cross-Claim conflict with the policy's provisions, LMC denies them.

4. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the First Count of the Cross-Claim.

5. The referenced provisions of the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 5 of the First Count of the Cross-Claim conflict with the referenced provisions, LMC denies them.

6. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the First Count of the Cross-Claim.

7. The referenced exclusions in the Ohio Casualty policy speak for themselves. To the extent that the allegations in paragraph 7 of the First Count of the Cross-Claim conflict with the referenced exclusions, LMC denies them.

---

ILMC is one of the Kemper Insurance Companies, and issued the insurance policy at issue in the Fourth-Party Complaint.

8. The referenced provisions in the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 8 of the First Count of the Cross-Claim conflict with the referenced provisions, LMC denies them.

9. The referenced provisions of the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 9 of the First Count of the Cross-Claim conflict with the referenced provisions, LMC denies them.

10. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the First Count of the Cross-Claim.

11. The referenced definitions of the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 11 of the First Count of the Cross-Claim conflict with the referenced definitions, LMC denies them.

12.-15. The referenced endorsements to the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraphs 12 through 15 of the First Count of the Cross-Claim conflict with the referenced endorsements, LMC denies them.

16.-19. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 16 through 19 of the First Count of the Cross-Claim.

20. The referenced Conditions of the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 20 of the First Count of the Cross-Claim conflict with the referenced Conditions, LMC denies them. LMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 20 of the First Count of the Cross-Claim.

21.-22. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 21 and 22 of the First Count of the Cross-Claim.

23. LMC denies the allegations contained in paragraph 23 of the First Count of the Cross-Claim.

24. LMC admits the allegations contained in paragraph 24 of the First Count of the Cross-Claim.

25. The referenced provisions of the Ohio Casualty commercial umbrella policy speak for themselves. To the extent that the allegations in paragraph 25 of the First Count of the Cross-Claim conflict with the referenced provisions, LMC denies them.

26. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the First Count of the Cross-Claim.

27. The referenced exclusions to the Ohio Casualty commercial umbrella policy speak for themselves. To the extent that the allegations in paragraph 27 of the First Count of the Cross-Claim conflict with the referenced exclusions, LMC denies them.

28. The referenced definitions of the Ohio Casualty commercial umbrella policy speak for themselves. To the extent that the allegations in paragraph 28 of the First Count of the Cross-Claim conflict with the referenced definitions, LMC denies them.

29. The referenced endorsement speaks for itself. To the extent that the allegations in paragraph 29 of the First Count of the Cross-Claim conflict with the referenced endorsement, LMC denies them.

30. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the First Count of the Cross-Claim.

WHEREFORE, Lumbermens Mutual Casualty Company demands judgment be entered in its favor and against Cross-Claimant Ohio Casualty, denying all relief sought by Ohio Casualty against LMC, including such other relief including attorneys' fees and costs as the Court may deem appropriate.

**SECOND COUNT**

1. LMC repeats and realleges each and every answer to paragraphs 1 through 30 of the First Count of the Cross-Claim as if fully set forth herein.

2. LMC admits that Ohio Casualty issued policies of insurance to G.M Crocetti, Inc. LMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the Second Count of the Cross-Claim.

3. LMC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Second Count of the Cross-Claim.

4. The referenced provisions of the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 4 of the Second Count of the Cross-Claim conflict with the referenced provisions, LMC denies them.

5. LMC denies that there is no insurance coverage provided under the referenced Ohio Casualty policy of insurance. LMC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the Second Count of the Cross-Claim.

6. The referenced provision of the Ohio Casualty policy of insurance speaks for itself. To the extent that the allegations in paragraph 6 of the Cross-Claim conflict with the referenced provision, LMC denies them.

7. The referenced exclusions to the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 7 of the Second Count of the Cross-Claim conflict with the referenced exclusions, LMC denies them.

8. The referenced endorsement to the Ohio Casualty policy of insurance speaks for itself. To the extent that the allegations in paragraph 8 of the Second Count of the Cross-Claim conflict with the referenced endorsement, LMC denies them.

9. LMC denies the allegations contained in paragraph 9 of the Second Count of the Cross-Claim.

10. The referenced definitions to the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 10 of the Second Count of the Cross-Claim conflict with the referenced definitions, LMC denies them.

11. The referenced Conditions to the Ohio Casualty policy of insurance speak for themselves. To the extent that the allegations in paragraph 11 of the Second Count of the Cross-Claim conflict with the referenced Conditions, LMC denies them.

12. LMC denies that Ohio Casualty does not owe insurance coverage.

13. LMC admits that G.M. Crocetti, Inc. filed an Initial Disclosure and that the Initial Disclosure speaks for itself. To the extent that the allegations in paragraph 13 of the Second Count of the Cross-Claim conflict with the Initial Disclosure, LMC denies them.

WHEREFORE, LMC demands judgment be entered in its favor and against Cross-Claimant Ohio Casualty, denying all relief sought by Ohio Casualty against LMC, including such other relief including attorneys' fees and costs as the Court may deem appropriate.

**Affirmative Defenses**

**FIRST AFFIRMATIVE DEFENSE  
(Failure to State a Claim)**

The Cross-Claim fails to state a claim upon which relief can be granted against LMC.

**SECOND AFFIRMATIVE DEFENSE  
(Trataros is Not an Insured)**

Trataros is not a named insured in the LMC Policy and Trataros is therefore not entitled to a defense or indemnification from LMC, and Ohio Casualty is therefore not entitled to indemnification, contribution, or subrogation from, or to have any judgment entered against, LMC.

**THIRD AFFIRMATIVE DEFENSE  
(Bartec is Not an Insured)**

Bartec Industries, Inc. is not a named insured in the LMC Policy and Bartec Industries, Inc., the insured of Cross-Claimaint, is not entitled to a defense or indemnification from LMC. Ohio Casualty is therefore not entitled to indemnification, contribution, or subrogation from, or to have any judgment entered against, LMC.

**FOURTH AFFIRMATIVE DEFENSE  
(Trataros is Not an Additional Insured for Claims at Issue)**

The LMC Policy provides additional insured status where the Named Insured G.M. Crocetti, Inc. is required to provide insurance in a contract but only for liability arising from the named insured G.M. Crocetti, Inc.'s work for that party. Any liability of Trataros is the result of Trataros' conduct in insisting that Crocetti install terrazzo over Conflow over Crocetti's objections. Any liability of Trataros does not arise out of Crocetti's work but arises out of Trataros' decisions. Trataros is therefore not an additional insured under the LMC Policy for the terrazzo claims and Ohio Casualty is not entitled to indemnification, contribution or subrogation from, or to have any



judgment entered against, LMC.

**FIFTH AFFIRMATIVE DEFENSE**  
**(Bartec is Not an Additional Insured for Claims at Issue)**

The LMC Policy provides additional insured status where the Named Insured G.M. Crocetti, Inc. is required to provide insurance in a contract but only for liability arising from the named insured G.M. Crocetti, Inc.'s work for that party. G.M. Crocetti, Inc. did not perform work for Bartec Industries, Inc. and therefore Bartec Industries, Inc. is not an additional insured under the LMC Policy for the Terrazzo claims and Ohio Casualty is not entitled to indemnification, contribution or subrogation from, or to have any judgment entered against, LMC.

**SIXTH AFFIRMATIVE DEFENSE**  
**(Lack of Occurrence)**

The LMC Policy requires that a covered claim arise out of an "occurrence". Trataros ordered G.M. Crocetti, Inc., over Crocetti's objections, to install terrazzo flooring over Conflow, knowing that it would fail. As such, the claim does not constitute an "occurrence" and there is no duty to defend or indemnify Trataros under the LMC Policy, and therefore Ohio Casualty is not entitled to indemnification, contribution or subrogation from, or to have any judgment entered against, LMC.

**SEVENTH AFFIRMATIVE DEFENSE**  
**(Your Work Exclusion Bars Any Coverage)**

The LMC Policy contains an Exclusion titled "Your Work" which excludes coverage for any property damage that results from the work conducted by Trataros. As such, there is no coverage for any claim by Trataros against LMC and Ohio Casualty is not entitled to indemnification, contribution or subrogation from, or to have any judgment entered against, LMC.

**EIGHTH AFFIRMATIVE DEFENSE**  
**(Failure to Provide Proper Notice)**

The LMC Policy contains a notice Condition that requires notification of an occurrence as soon as practicable and immediate notification of an offense that may result in a claim. The notice Condition also requires immediate notice of a claim or suit. Trataros failed to comply with this Condition and therefore there is no duty to defend or indemnify Trataros under the LMC Policy, and Ohio Casualty is not entitled to indemnification, contribution or subrogation from, or to have any judgment entered against, LMC.

**NINTH AFFIRMATIVE DEFENSE  
(Other Insurance)**

The LMC Policy contains provisions that provide that if there is any other collectible insurance available to an insured, the LMC Policy will be excess of the other collectible insurance.

Cross-Claimant's claims are barred in whole or in part to the extent that there is other collectible insurance available to the insured.

**TENTH AFFIRMATIVE DEFENSE  
(Failure to State a Claim)**

The Cross-Claim fails to allege facts sufficient to constitute a claim against LMC.

**ELEVENTH AFFIRMATIVE DEFENSE  
(Other Defenses)**

LMC reserves the right to amend its Answer by way of adding affirmative defenses, counterclaims, cross-claims, or by instituting third party actions as additional facts are obtained through investigation and discovery.

WHEREFORE, LMC prays that Cross-Claimant take nothing by its Cross-Claim; that LMC be dismissed with prejudice and awarded fees and costs incurred in defending this suit; and that this Court enter a declaration that LMC is not obligated to provide insurance coverage for Fourth-Party Plaintiffs or any other party, and for any further relief that this Court deems equitable and just.

DATED: January 14, 2008

By: s/ Michael S. Miller  
Michael S. Miller  
**TOMPKINS, McGUIRE,  
WACHENFELD & BARRY LLP**  
*Attorneys for Fourth-Party Defendant  
Lumbermens Mutual Casualty Company  
("LMC"), improperly sued as Kemper  
Casualty Insurance Company d/b/a Kemper  
Insurance Company*  
140 Broadway  
51<sup>st</sup> Floor  
New York, New York 10005  
(212) 714-1720  
-and-  
Four Gateway Center  
100 Mulberry Street  
Newark, New Jersey 07102  
(973) 622-3000

**DECLARATION OF SERVICE**

The undersigned hereby declares, under penalty of perjury, that on January 14, 2008, he caused a true copy of the foregoing Answer, etc. to be served via electronic filing and first class mail upon counsel for the various parties as follows:

JoAnne M. Bonacci, Esq.

**DREIFUSS BONACCI & PARKER, LLP,**

Attorneys for Fourth-Party Plaintiffs,

*TRATAROS CONSTRUCTION, INC AND TRAVELERS*

*CASUALTY AND SURETY COMPANY*

26 Columbia Turnpike - North Entrance

Florham Park, NJ 07932

Tel: (973) 514-1414

Fax: (973) 514-5959

email: [jbonacci@dbplawfirm.com](mailto:jbonacci@dbplawfirm.com)

David Abramovitz, Esq,

**ZETLIN & DECI-HARA, LLP**

Attorneys for Defendants/Third-Party Plaintiff,

*KOHNJ PEDERSON, FOX & ASSOCIATES, P.C*

501 Second Avenue

New York, NY 10017

Tel: (212) 682-6800

Fax: (212) 682-6861

Email: [dabramovitz@zdlaw.com](mailto:dabramovitz@zdlaw.com)

Robert R. Rigolosi

**SEGAL McCAMBRIDGE SINGER & MAHONEY**

Attorneys for Fourth-Party Defendant

*SPECIALTY CONSTRUCTION BRANDS, INC. t/a TEC*

830 Third Aye, Suite 400

NY, NY 10022

Tel: (212) 651-7500/(212) 651-7423

Fax: (212) 651-7499

email: [rrigolosi@msm.com](mailto:rrigolosi@msm.com)

Gary Wirth, Esq.

**TORRE, LENTZ, GAMMELL, GARY & RITTMASER, LLP**

Attorneys for Fourth-Party Defendant

*CAROLINA CASUALTY INSURANCE COMPANY*

100 Jericho Quadrangle, Suite 309

Jericho, NY 11753

Tel: (516) 240-8900

Fax: (516) 240-8950

Email: [gwirth@tlggr.com](mailto:gwirth@tlggr.com)

William Kelly, Esq.

**GOLDBERG SEGALL, LLP.**

Attorneys for Fourth-Party Defendant

*DAYTON SUPERIOR SPECIALTY CHEMICAL CORP.*

a/k/a *DAYTON SUPERIOR CORP.*

170 Hamilton Avenue, Suite 203

White Plains, New York 10601

Tel: (914) 798-5400

Fax: (914) 798-5401

email: [wkelly@goldbergsegalla.com](mailto:wkelly@goldbergsegalla.com)

Henry G. Morgan, Esq.

**MORGAN, MELHUISE, ABRUTYN**

Attorneys for Fourth-Party Defendant

*OHIO CASUALTY INSURANCE COMPANY*

651 West Mt. Pleasant Avenue, Suite 200

Livingston, NJ 07039

Tel: (973) 994-2500

Fax: (973) 994-3375

email: [counsel@morganlawfirm.com](mailto:counsel@morganlawfirm.com)

Donald G. Sweetman, Esq.

**GENNET, KALLMANN, ANTIN & ROBINSON, P.C.**

Attorney for Fourth-Party Defendants

*GREAT AMERICAN INSURANCE COMPANY,*

*AMERICAN ALLIANCE INSURANCE COMPANY,*

*AMERICAN NATIONAL FIRE INSURANCE COMPANY*

*and GREAT AMERICAN INSURANCE COMPANY OF NEW YORK*

6 Campus Drive

Parsippany, NJ 07054

Tel: (973) 285-1919

Fax: (973) 285-1177

Email: [dsweetman@gkar-law.com](mailto:dsweetman@gkar-law.com)

Ann Odelson, Esq.

**CARROLL, MCNULTY & KULL**

Attorney for Fourth-Party Defendant

*UNITED STATE FIRE INSURANCE COMPANY*

270 Madison Avenue

New York, NY 10016

Tel: (212) 252-0004

Fax: (212) 252-0444

Email: [sds@melitoadolfson.com](mailto:sds@melitoadolfson.com)

S. Dwight Stephens, Esq.

**MELITO & ADOLFSSEN, P.C.**

Attorneys for Fourth-Party Defendant

*ZURICH AMERICAN INSURANCE COMPANY*

233 Broadway

New York, NY 10279

Tel: (212) 238-5900

Fax: (212) 238-8999

Email: [sds@melitoadolfson.com](mailto:sds@melitoadolfson.com)

Martin Paul Lavelle, Esq.

**GREEN & LAVELLE**

Attorneys for Fourth-Party Defendant,

*NATIONAL UNION FIRE INSURANCE*

*COMPANY OF PITTSBURGH, PA*

110 William Street

New York, NY 10038

Tel: (212) 266-5580/5881

Fax: (212) 528-0134

Email: [martin.lavelle@aig.com](mailto:martin.lavelle@aig.com)

Diana E. Goldberg, Esq.

**MOUND COTTON WOLLAN & GREENGRASS**

Attorneys for Fourth-Party Defendant

*COMMERCIAL UNDERWRITERS INSURANCE*

*COMPANY and ALLIED WORLD ASSURANCE*

*COMPANY (U.S.) INC.*

One Battery Park Plaza, <sup>9</sup>th Floor

New York, NY 10004-1486

Tel: (212) 804-4200

Fax: (212) 344-8066

Email: [dgoldberg@moundcotton.com](mailto:dgoldberg@moundcotton.com)

Timothy B. Froessell, Esq.

**HOLLAND & KNIGHT, LLP**

Attorneys for Defendants/Third-Party Plaintiffs,  
*DORMITORYAUTHORITY- STATE OF NEW YORK*  
*and TDX CONSTRUCTION CORP.*

195 Broadway  
New York, NY 10007  
Tel: (212) 513-3484  
Fax: (212) 385-9010  
email: [tbfroess@hklaw.com](mailto:tbfroess@hklaw.com)

Tricia Wishert, Esq.  
**RIKER, DANZIG, SCHERER, HYLAND & PERRETTI, LLP**  
Attorneys for Fourth-Party Defendant,  
*HARLEYSVILLE MUTUAL INSURANCE COMPANY*  
*(a/k/a HARLEYSVILLE INSURANCE COMPANY)*  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, New Jersey 07960  
Tel: (973) 451-3862  
Fax: (973) 451-3714  
email: [twishert@riker.com](mailto:twishert@riker.com)

DATED: January 14, 2008

s/Michael S. Miller  
Michael S. Miller